

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>JAMAL MARQUIS FRANKLIN,</b>	§	
<b>PLAINTIFF,</b>	§	
	§	
<b>V.</b>	§	<b>CIVIL CASE No. 3:24-CV-222-G-BK</b>
	§	
<b>NAIDJA TAYLOR, ET AL.,</b>	§	
<b>DEFENDANTS.</b>	§	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to [28 U.S.C. § 636\(b\)](#) and *Special Order 3*, this *pro se* civil action was referred to the United States magistrate judge for case management, including the issuance of findings and a recommended disposition where appropriate. Upon review of the relevant pleadings and applicable law, this action should be **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

**I. BACKGROUND**

On January 29, 2024, Jamal Marquis Franklin filed a complaint against Naidja Taylor, a state court coordinator, and the State of Texas. [Doc. 3 at 2](#). At a minimum, the complaint is inartfully pled. Franklin alleges a violation of 18 U.S.C. § 242 (a federal criminal statute), and accuses Taylor of defamation of character. [Doc. 3 at 3-4](#). Franklin seeks to hold the State of Texas responsible for Taylor’s purported actions and seeks damages of \$200,000 for emotional distress. [Doc. 3 at 4](#).

As best the Court can glean, Franklin alleges that on January 26, 2024, Taylor used disrespectful language, treated him “like a second class citizen,” and told him to leave the clerk’s office before he could get a copy of a warrant. [Doc. 3 at 4-5](#). Franklin avers, “I fear for my life

and safety and freedom due to racism and discrimination my rights was violated and my due process rights was violated they refuse to let me fire my attorney and do any type of motions.”

[Doc. 3 at 5](#).

Upon review, the Court concludes that subject matter jurisdiction is lacking. Thus, this action should be dismissed *sua sponte*.

## II. ANALYSIS

The Court should always examine, *sua sponte*, if necessary, the threshold question of whether it has subject matter jurisdiction. [The Lamar Co., L.L.C. v. Mississippi Transp. Comm'n](#), 976 F.3d 524, 528 (5th Cir. 2020); [FED. R. CIV. P. 12\(h\)\(3\)](#) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). Unless otherwise provided by statute, a federal district court has subject-matter jurisdiction over (1) a federal question arising under the Constitution, a federal law, or a treaty, [see 28 U.S.C. § 1331](#), or (2) a case in which there is complete diversity of citizenship between parties and the matter in controversy exceeds \$75,000, [see 28 U.S.C. § 1332](#). “Under the well-pleaded complaint rule, ‘a federal court has original or removal jurisdiction only if a federal question appears on the face of the plaintiff’s well-pleaded complaint; generally, there is no federal jurisdiction if the plaintiff properly pleads only a state law cause of action.’” [Gutierrez v. Flores](#), 543 F.3d 248, 251-52 (5th Cir. 2008). Further, the plaintiff, as the party asserting subject-matter jurisdiction, bears the burden of establishing that subject matter jurisdiction exists. [See Willoughby v. U.S. ex rel. U.S. Dep’t of the Army](#), 730 F.3d 476, 479 (5th Cir. 2013).

The Court must also liberally construe pleadings filed by *pro se* litigants. [See Erickson v. Pardus](#), 551 U.S. 89, 94 (2007) (noting *pro se* pleadings are “to be liberally construed” and “held to less stringent standards than formal pleadings drafted by lawyers”); [Cf. FED. R. CIV. P. 8\(e\)](#)

(“Pleadings must be construed so as to do justice.”). Even under the most liberal construction, however, Franklin has not alleged facts that establish federal question or diversity jurisdiction.

“A federal question exists only [in] those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Singh v. Duane Morris LLP*, 538 F.3d 334, 337-38 (5th Cir. 2008) (citation and internal quotation marks omitted). The complaint in this case contains no factual allegations that support federal question jurisdiction. Franklin complains of defamation by a state court employee and mentions only in passing the Due Process Clause, racism, and discrimination. But the mere mention of a federal law or bare assertion of a federal claim is not enough to obtain federal question jurisdiction. Indeed, “federal courts are without power to entertain claims otherwise within their jurisdiction if they are so attenuated and unsubstantial as to be absolutely devoid of merit . . . .” *Hagans v. Levine*, 415 U.S. 528, 536-37 (1974) (internal citation and quotation marks omitted); see *Murphy v. Inexco Oil Co.*, 611 F.2d 570, 573 (5th Cir. 1980) (“[T]he assertion that the claim involves [a federal] question must be more than incantation.”).

Moreover, if Franklin seeks to file a criminal complaint or allege criminal law violations in this Court, his request lacks any legal basis and thus cannot support a federal cause of action. *Doc. 3 at 5*. Criminal statutes do not create a private right of action. For a private right of action to exist under a criminal statute, there must be “a statutory basis for inferring that a civil cause of action of some sort lay in favor of someone.” *Cort v. Ash*, 422 U.S. 66, 79 (1975), *overruled in part by Touche Ross & Co. v. Redington*, 442 U.S. 560 (1979); see *Suter v. Artist M.*, 503 U.S. 347, 363 (1992) (concluding that the party seeking to imply a private right of action bears the burden to show that Congress intended to create one). However, Franklin has pled nothing that

would even come close to meeting that burden. Moreover, “decisions whether to prosecute or file criminal charges are generally within the prosecutor’s discretion, and, as a private citizen, [the plaintiff] has no standing to institute a federal criminal prosecution and no power to enforce a criminal statute.” *Gill v. Texas*, 153 F. App’x 261, 262-63 (5th Cir. 2005).

Further, Franklin’s claim for monetary damages against the State of Texas is barred by sovereign immunity under the United States Constitution. Eleventh Amendment immunity bars suit against a state or state entity, whether or not money damages or injunctive relief is sought. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 69-71 (1989) (states are not persons subject to suit under 42 U.S.C. § 1983 because of the Eleventh Amendment).

Finally, Franklin’s assertion that Defendants can be found in Texas defeats subject-matter jurisdiction on the basis of diversity. *Doc. 3 at 2*. See *Corfield v. Dallas Glen Hills LP*, 355 F.3d 853, 857 (5th Cir. 2003) (holding district court cannot exercise diversity jurisdiction if the plaintiff shares the same state of citizenship as any one of the defendants) (citation omitted). And because the complaint does not present an adequate basis for federal question or diversity jurisdiction, the Court cannot exercise supplemental jurisdiction over any state-law claims Franklin intends to assert. 28 U.S.C. § 1367(a).

In sum, the complaint should be dismissed *sua sponte* and without prejudice for lack of subject matter jurisdiction.

### **III. LEAVE TO AMEND**

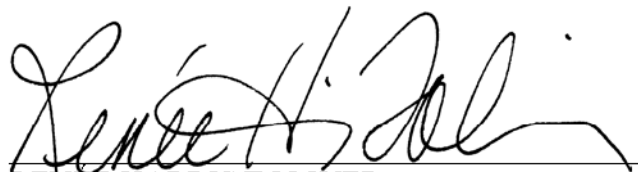
Ordinarily, a *pro se* plaintiff should be granted leave to amend his complaint before dismissal, but leave is not required when he has already pled his “best case.” *Brewster v. Dretke*, 587 F.3d 764, 767-68 (5th Cir. 2009). Here, the facts as alleged by Franklin in his complaint

clearly demonstrate a lack of subject matter jurisdiction in this Court. Thus, granting leave to amend would be futile and cause needless delay.

#### IV. CONCLUSION

For the foregoing reasons, Franklin's complaint should be **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. [FED. R. CIV. P. 12\(h\)\(3\)](#).

**SO RECOMMENDED** on February 1, 2024.



RENEE HARRIS TOLIVER  
UNITED STATES MAGISTRATE JUDGE

#### INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* [28 U.S.C. § 636\(b\)\(1\)](#); [FED. R. CIV. P. 72\(b\)](#). An objection must identify the finding or recommendation to which objection is made, the basis for the objection, and the place in the magistrate judge's report and recommendation the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996), *modified by statute on other grounds*, [28 U.S.C. § 636\(b\)\(1\)](#) (extending the time to file objections to 14 days).